CANCELLED

SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

MISC.APPEAL NO. 675 /2005

APPELLANTS
PLAINTIFFS :

1. Tikeshwar Das s/o Jitendra Das aged 16 (Sixteen) years, minor through next friend mother Gayatri Bai w/o Jitendra Das, resident of village Rawan, Tahsil Baloda-Bazar District Raipur

2. Khilendra Das s/o Jitendradas Vaishnava aged 15 (Fifteen) years, minor through next friend mother Gayatari Bai w/o Jitendradas resident of village Rawan, Tahsil Baloda-Bazar District Raipur

3. Jitendra Das s/o Kanakdas Vaishnava aged 43 (Forty three) years, resident and cultivator of village Rawan, Tahsil - Baloda Bazar, District Raipur

VERSUS

RESPONDENTS
DEFENDANTS :

1. Vijendra Das s/o Kanak Das Vaishnav aged 56 years;

2. Govind Das s/o Vijendra das Vaishnaw aged 31 years;

3. Sati Bai w/o Vijendra Das Vaishnaw, aged 53 years;

4. RajendraDas s/o Kanakdas Vaishnaw, aged 50 years;

5. Takeshwar Das s/o Rajendra Das Vaishnav aged 29 years;

6. Dhaneshwar Das s/o Rajendradas Vaishnav, aged 27 years

7. Saraswati Bai wd/o Kanakdas Vaishnav aged 92 years,

All cultivator and resident of village Rawan, Tahsil Baloda-Bazar, District Raipur (C.G.)

8. State of Chhattisgarh through the Collector, Raipur, District Raipur

P.R. No. 1491 dt 13.6.05
Presented by Shri C.R. Sahu
dated 13.6.05

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

M.A. No. 675/05

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	2-1-2006 Mr. Janak Ram Verma, counsel for the appellants. Mr. Raja Sharma, counsel for respondents No.1 to 7. Mr. J.D.Bajpai, Government Advocate for respondent No.8/State. Learned counsel for the parties pray for hearing and disposal of the appeal instead of hearing of M.(C.)P.No.842/2005. Considered. Allowed. Heard. The appellants, on the averment that the suit property is coparcenery property of the appellants and respondents No.1 to 7, which has not so far been partitioned, filed a suit for partition, injunction and mesne profit, and also filed an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure praying to restrain respondent Nos.1 to 7 from alienating the suit property till disposal of the suit. Respondents No.1 to 7 opposed the suit and pleaded that, in the year 1980 or 1981, all the lands were partitioned among the coparceners and thereafter lands have been recorded in their respective names in the revenue record who are in possession thereof according to their share. Learned trial Court, considering the pleadings of both the parties, documents and after recording detailed reasons held that, the case of the appellants is not *prima facie* and the	

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आदेश पत्रक

M.A. No. 675/05

मामला क्रमांक —2— सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

principles of balance of convenience and irreparable loss also do not lie in their favour, therefore, dismissed the application.

Undisputedly, the lands were recorded in the name of Kanak Das, said to be the ancestor of the appellants and respondents No.1 to 7. It is also not disputed that Kanak Das is dead and appellant No.3, Jitendra Das, respondent No.1, Vijendra Das, respondent No.4, Rajendra Das are his sons and respondent No.7, Saraswati Bai is his wife. It is apparent from the order of the trial Court that, when the suit was filed, at that time the suit property was not recorded jointly in the names of the appellants and respondents No.1 to 7 but was recorded separately in their names. Respondents' contention is that, oral partition took place in the year 1980-1981 and according to the partition all the three sons and Saraswati Bai held lands separately and since then are enjoying the property. It is also apparent from the order of the trial Court that, appellant No.3, Jitendra Das received the compensation amount of those lands which were acquired by Modi Cement. From all these facts *prima facie* it appears that the lands are recorded separately in the names of coparceners, as a result of some separation in the year 1980 or 1981 i.e. the period when appellants No.1 and 2 were not born. All these facts clearly establish that, for grant of temporary injunction, *prima facie* case, balance of convenience and principle of irreparable loss do not lie in favour of the appellants, and the trial Court, in recording the

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आदेश पत्रक

M.A. No. 675/05

मामला क्रमांक -3- सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	said findings after elaborate discussion, did not commit any error. However, it is made clear that, this order or the impugned order passed by the trial Court shall not affect the merit of the case. The appeal, being devoid of substance, does not call for any interference and is therefore dismissed. In the light of above order, M.(C.)P.No.842/2005 stands dismissed. **Sd/-** **Vijay Kumar Shrivastava** **Judge**	

G.Singh